SUPPLEMENTARY BENEFIT

Requirements—classification of the categories of claimants.

The claimant was a widower and had been in poor health for many years. Mrs P. occupied 2 rooms in the claimant's house, which she furnished herself. She shared use of the bathroom, stairs, corridor and kitchen. She bore her own costs for lighting and heating, bought and cooked her own food and provided for herself such other household goods as she required. At all times she had given the claimant some domestic help. The supplementary benefit officer decided that a deduction of £4.60 should be made from the claimant's rent under regulation 22(4)(d) of the Supplementary Benefit (Requirements) Regulations 1980 and allowed £1.40 as an additional requirement for heating under paragraph 3(a) of Schedule 3 to those regulations. On appeal, the tribunal upheld the supplementary benefit officer's decision in respect of the rent share attributable to Mrs P., increased to £2.80 the additional requirement for heating and awarded £4.60 as an additional requirement for domestic assistance. The supplementary benefit officer appealed to a Social Security Commissioner.

Held that:

1. for the purpose of calculating normal and additional requirements, claimants are classified as relevant persons, single householders, boarders and any other persons (paragraph 14);

2. for the purpose of calculating housing requirements, the category of those who are not non-householders and who qualify for housing requirements is wider than the category of "householders" who qualify for normal requirements (paragraph 16);

3. in the context of housing requirements, claimants can be classified only as:—

   (a) persons who derive their entitlement from regulation 14(2)(a); or

   (b) non-householders (paragraph 17);

4. the terms "household" and "members of the same household" must be given their normal everyday meaning.

The appeal was allowed.

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1. This is a benefit officer's appeal, brought by my leave, from a decision of the supplementary benefit appeal tribunal ("the tribunal") dated 13 April 1981 which varied a decision of the benefit officer issued on 29 January 1981.

2. I held an oral hearing of this appeal. The benefit officer was represented by Mr P. N. Milledge of the Solicitor's Office of the Department of Health and Social Security. The claimant appeared and was represented by Mr R. Smith, solicitor, of the Child Poverty Action Group. I am indebted to both Mr Milledge and Mr Smith for their assistance in the construction and application of complex, and relatively novel, subordinate legislation.

3. The claimant, now aged 67, is a widower. He has been in poor health for many years. Since the date of the tribunal hearing his doctor has certified that he suffers from bronchiectasis and relapsing acute bronchitis, which have at times developed into pneumonia with heart failure. The doctor considers that it is "unsuitable" for the claimant to live alone and "an advantage" for him to have someone living in his house to attend to him in emergencies. In the doctor's view the claimant is unfit for sustained effort.

4. The claimant lives in a house rented from the local authority. Since about May 1977 he has been in receipt of a supplementary allowance followed by a supplementary pension. On 4 September 1978 Mrs P. came to live in the house. Mrs P. is a widow, now aged over 70. She is in receipt of retirement pension. At no material time has she been in receipt of supplementary benefit. It appears that she vacated a local authority flat in order to move to the claimant's house. It has never been suggested that the claimant and Mrs P. live together as husband and wife.

5. Mrs P. enjoys what I understand to be the exclusive occupation of two rooms in the claimant's house. She has furnished these herself. She shares the bathroom, stairs, corridor and kitchen. It appears that she bears her own costs in respect of lighting and heating. She buys and cooks her own food and provides for herself such other household goods as she requires. At all material times she has rendered some domestic assistance to the claimant.

6. It is not, I think, in dispute that the arrangements which I have particularised in paragraph 5 above subsisted throughout the period relevant to this appeal. The position in respect of payments moving between the claimant and Mrs P. is less clear (as appears hereunder).

7. The claimant duly notified the Supplementary Benefits Commission of Mrs P.'s entry into his house. At that time paragraph 11(2) of Schedule 1 to the Supplementary Benefits Act 1976 provided as follows:

> "(2) Where another person, not being a person whose requirements are aggregated with, and treated as, the requirements of the householder under paragraph 3 of this Schedule, resides, otherwise than as a sub-tenant, in the premises for which the rent is paid, then, unless the householder or a person whose requirements are aggregated with, and treated as, his under paragraph 3(1) is blind, the amount mentioned in sub-paragraph (1)(a) above [i.e. an amount equal to the net rent payable by the householder or such part of the amount as is reasonable in the circumstances] may be reduced by an amount not exceeding such part of the net rent as is reasonably attributable to that other person."

On 29 September 1978 the Commission, pursuant to the aforesaid paragraph 11(2), reduced the claimant's then entitlement to supplementary allowance by the sum of £1.45 a week.

8. Against this reduction the claimant appealed to the tribunal. (I shall refer to this as "the first appeal".) His written statement in support of the first appeal contains the following passages which are significant in the context of the appeal presently before me:

> ".....all I get out of it [i.e. out of the arrangement with Mrs P.] is that I am not quite so shut off from the world."

"By reducing my money you have set my income below the poverty line....."

"You must remember that I have no obligations towards Mrs P....."

9. On 13 November 1978 the tribunal allowed the first appeal, holding that no deduction under paragraph 11(2) fell to be made. In view of the interpretation which Mr Smith has invited me to put upon this decision, it is desirable that I should quote in full the findings of fact and the reasons for decision recorded on the relevant form LT235:

"The appellant lives in a local authority house. He is accommodating Mrs P. who relinquished her own local authority flat (and incidentally then ceased to draw supplementary pension). The rent allowance included in the assessment of his supplementary allowance has been reduced by £1.45 on account of the presence of Mrs P."

"Mrs P. has, correctly, been regarded as a non-dependant in the appellant's house. In the tribunal's view it is not reasonable in all the circumstances to attribute any of the rent to her."

It will be noted that no reference is made either to the claimant's health or to the rendering by Mrs P. of any assistance to the claimant. (I should add that there is no such reference in the written statement which the claimant made in support of the first appeal.)

10. The position continued thus until the new supplementary benefit legislation came into force on 24 November 1980. In purported pursuance of that legislation the benefit officer, on 29 January 1981, decided that a deduction of £4.60 should be made from the claimant's housing requirements. This had the effect of reducing the claimant's total weekly benefit income to a sum of £0.70 below that prevailing immediately before 24 November 1980. In accordance with regulation 10 of the Supplementary Benefit (Transitional) Regulations 1980 [S.I. 1980 No 984] the sum of £0.70 was added to the supplementary pension the subject of the decision of 29 January 1981. The decision applied to the period from the prescribed pay day in the week commencing 16 February 1981 to and including the prescribed pay day in the week commencing 10 August 1981.

11. Housing requirements are the subject of Part IV (regulations 14 to 23) of the Supplementary Benefit (Requirements) Regulations 1980 [S.I. 1980 No 1299]. At the time material to this appeal these Regulations had already been amended by the Supplementary Benefit (Aggregation, Requirements and Resources) Amendment Regulations 1980 [S.I. 1980 No 1774]. Regulation 22 is entitled "Reduction in amounts applicable for certain occupants of the home". In so far as is relevant to this appeal it provided as follows:

"22.—(1) The amounts applicable under regulations 15 to 20 shall be reduced in accordance with the following paragraphs where any part of the home is let, other than to a boarder, or is occupied by non-dependants.

(2) Where any part of the home is let the reduction shall be by the amount calculated on a weekly basis receivable from the letting less—

(a) .....

(b) .....

(c) .....

(3) Subject to paragraph (5), where the home is also occupied by a non-dependant the reduction shall be by the amount of

a housing contribution calculated in accordance with paragraph (4).

(4) For the purposes of paragraph (3) a housing contribution shall be assumed in respect of each non-dependant, or group of non-dependants, who—

(a) form an assessment unit for the purposes of a current entitlement to a pension or allowance; or

(b) are not members of such a unit but would if a pension or allowance were payable, or were payable to one of them, be members of a single assessment unit,

and the amount of the reduction shall be—

(c) in respect of—

(i) an assessment unit within sub-paragraph (a),

(ii) an assessment unit within sub-paragraph (b) where the person to whom the pension or allowance would be payable is aged less than 18,

(iii) an assessment unit within sub-paragraph (b), where a claim has been made and if the maximum, instead of some lesser, amount had been applicable under regulation 23(1) (non-householder's contribution), a pension or allowance would be payable to a person aged not less than 18,

the sum of £2.15;

(d) in any other case, the sum of £4.60.

(5) No reduction shall be made under paragraph (3)—

(a) where the claimant, or the partner of the claimant, is blind;

(b) where an amount is applicable to the claimant under paragraph 14(1) in column (2) of Schedule 3 (additional requirements, domestic assistance).''

(Regulation 22 as set out above is currently in force *save that* the sums mentioned therein have been up-rated; paragraph 5(b) has been expanded; and sub-paragraph (5)(c) has been added in order to take account of non-dependants whose usual home is elsewhere.)

12. Regulation 22 has to be read in the light of certain important definitions. It will be recalled that the old paragraph 11(2) of Schedule 1 to the 1976 Act (cf. paragraph 7 above) used the words ''resides, otherwise than as a sub-tenant, in the premises for which rent is paid....''. ''Sub-tenant'' there bore the meaning, and nothing more than the meaning, which it bears in the ordinary law of landlord and tenant. Regulation 22 uses the words ''where any part of the home is let, other than to a boarder, or is occupied by non-dependants''. Each of the words which I have underlined is defined in the Requirements Regulations—and ''let'', in particular, is a snare for him who reads as he runs. I quote:

> ''the home' means the accommodation, with any garage, garden and outbuildings, normally occupied by the assessment unit and any other members of the same household as their home and it includes also any premises not so occupied which it would be impracticable or

unreasonable to except to be sold separately, in particular the croft land where, in Scotland, the home is a croft;" (regulation 2(1)).

"'rent' includes corresponding payments in respect of a licence or permission to occupy the home and 'let' and 'letting' and 'tenancy' shall be correspondingly construed;" (regulation 2(1)).

"(9) In this regulation—

(a) .....

(b) 'boarder' means a person, not being a person to whom any of paragraphs 1 to 9 of Schedule 2 applies, who—

(i) pays a charge which is inclusive of his accommodation and at least some cooked or prepared meals which are both prepared and consumed in the accommodation or in associated premises, or

(ii) is living in a hotel, guest-house, hostel or lodging-house, or in some similar establishment, or

(iii) is a refugee as defined in regulation 6 of the Supplementary Benefit (Conditions of Entitlement) Regulations 1980 [S.I. 1980 No 1586, now replaced by S.I. 1981 No 1526] who is living in a special centre for the reception of refugees prior to settlement in the community

but excluding any person whose accommodation and meals (if any) are provided by a close relative [defined in regulation 2(1)] or other than on a commercial basis." (Regulation 9(9)).

The draftsman has had his fun here at the expense of the reader. It will be seen that the above definition opens with the words "In this regulation"—i.e. regulation 9. Regulation 2(1), however, provides that "In these regulations... 'boarder' has the meaning assigned to it in regulation 9(9)(b) of these regulations;".)

"'non-dependant' means a person, other than a boarder, who is a member of the same household as the member or members of the assessment unit but is neither a member of the unit nor a person who satisfies, or if he were a member of the unit would satisfy, the condition of sub-paragraph (a) of paragraph (2) of regulation 5;" (regulation 2(1)).

Regulation 5(2) provides as follows:

"(2) For the purposes of the table [i.e. the table of the normal requirements of relevant persons and householders in paragraph 2(3) of Schedule 1 to the 1976 Act as amended (regulation 2(1))] a householder is a person, other than a partner [defined in regulation 2(1)], who—

(a) under Part IV of these regulations (housing requirements) is treated as responsible for expenditure on items to which any of those regulations other than regulation 23 (non-householder's contribution) relates or, if the household incurs no such expenditure, is the member of the household with major control over household expenditure;

(b) does not share such responsibility or control with another member of the same household; and

(c) is either not absent from the home or whose absence is for a period which has not yet continued for more than 13 weeks."

13. The mere length of paragraph 12 above suffices to demonstrate the degree of research and cross-reference necessary to an understanding of the single clause "where any part of the home is let, other than to a boarder, or is occupied by non-dependants". Even then, all is not entirely clear. Where the draftsman has been so prodigal with his definitions, it is with a sense of betrayal that one discovers that nowhere in the Requirements Regulations (or in any other part of the voluminous supplementary benefit legislation) is there any definition of either "household" or "member of the same household"—terms which are crucial to the definition of "non-dependant". Section 34(3) of the 1976 Act (as amended) provides that—

> "(3) Regulations may make provision as to the circumstances in which a person is to be treated for the purposes of any specified provision of this Act—
>
> (a) as being or not being a member of the same household as another person;
>
> (b) ....."

The only regulations which have been made under this power are regulations 2 and 4 of the Supplementary Benefit (Aggregation) Regulations 1980 [S.I. 1980 No 982], amended, with effect from 27 July 1981, by the Supplementary Benefit (Miscellaneous Amendments) Regulations 1981 [S.I. 1981 No 815]; regulation 4A of the 1980 Aggregation Regulations, as inserted by the aforesaid Miscellaneous Amendments Regulations; and regulations 2, 4 and 5 of the Supplementary Benefit (Aggregation) Regulations 1981 [S.I. 1981 No 1524], which re-enact the amended regulations 2 and 4 and the inserted regulation 4A of the 1980 Aggregation Regulations. These three regulations deal respectively with—

(a) circumstances in which married couples are to be treated as being, or not being, members of the same household;

(b) dependants who are not to be treated as members of the household; and

(c) dependants who are to be treated as members of the household.

They deal, that is, with certain specific cases. No overall definition is attempted.

14. From paragraph 12 above can also be seen the extent to which the Requirements Regulations cut across the traditional common law distinction between tenant and licensee. Indeed, from the standpoint of the Requirements Regulations that distinction seems to be quite irrelevant. One can go further: it is impossible to devise a *comprehensive* classification of claimants by reference to the interest which they have in the premises in which they live. As appears from paragraph 12 above, a "householder" is defined so as to exclude anyone who is a "partner" (i.e. "one of a married or unmarried couple"). For the purposes of calculating normal and additional requirements claimants are classified as—

(a) "relevant persons" (i.e. those whose requirements and resources are aggregated with those of a partner—see paragraphs 2(3) and 3(1) of Schedule 1 to the amended 1976 Act);

(b) "householders";

(c) "boarders"; and

(d) a category of persons to whom no generic name is assigned and who can only be ascertained by elimination, i.e. those who are neither relevant persons, nor the partners of relevant persons, nor householders nor boarders (see regulation 6).

To those who have some familiarity with the 1980 legislation in respect of supplementary benefit, it will come as no surprise to learn that, whilst categories (a) and (b) above are explicitly mentioned in Schedule 1 to the amended 1976 Act, categories (c) and (d) have to be sought out in the Requirements Regulations. I must add, moreover, that the classification essayed in this paragraph is by no means exhaustive. Regulation 6(2), for example, deals with the normal requirements of those who share responsibility for or control of household expenditure; and Schedule 2 to the Regulations sets out 13 "special cases", ranging from "Persons in residential accommodation" (which is in no way to be taken as meaning what it might appear to mean) to "Member of polygamous relationship".

15. Classification of claimants for the purposes of calculating housing requirements is not so straightforward. It is, perhaps, easiest to begin at the end. Regulation 23(2) of the Requirements Regulations reads:

> "(2) this regulation applies to a claimant where neither he nor any other member of the assessment unit satisfies the condition of sub-paragraph (a) of paragraph (2) of regulation 5 (meaning of householder)." (For regulation 5(2)(a) see paragraph 12 above.)

Regulation 23 is headed "Non-householder's contribution". Although the word "non-householder" does not appear in the body of regulation 23 (and is nowhere else defined), it can legitimately be, and in practice is, used to describe one of the categories of claimants for housing requirements.

16. In this branch of the law it would be derisively naive to expect that anyone who is not a "non-householder" must be a "householder". As can be seen from paragraph 12 above, "householder" has been defined so as to exclude anyone who is a "partner"; and "boarders" are neither householders nor non-householders. (Save in respect of certain periods of absence, boarders do not qualify for housing requirements—see regulation 14(5)(b), as amended with effect from 27 July 1981.) In any event, if the Requirements Regulations are construed and applied according to their letter, the genus "householder" is relevant only in the context of normal and additional requirements. In Part IV of the Regulations (which deals with housing requirements) the word "householder" does not appear. This is neither an oversight nor an infelicity. A glance at regulation 14 will show that the category of those who are not non-householders and who qualify for housing requirements is wider than the category of "householders" who qualify for normal and additional requirements. For example, where responsibility for relevant items of expenditure (for which see regulation 14(1)) is shared between the claimant and another member of the same household who is not a member of the claimant's assessment unit, the claimant is not a "householder"; but he *is* entitled to a sum by way of housing requirements, which sum may be greater, but not smaller, than the non-householder's contribution (see regulation 14(3)(b)). Again, a "householder" loses his status as such if he is absent from the home for more than 13 weeks (see regulation 5(2)(c)). In certain circumstances absence of up to one year will not jeopardise entitlement to housing requirements (see regulation 14(4)).

17. It follows, accordingly, that it is inept to use the word "householder" in the context of housing requirements. Claimants cannot be more satisfactorily classified than by saying that they are either—

(a) persons who derive their entitlement from regulation 14(2)(a); or

(b) non-householders.

It would surely be to the general advantage if the draftsman were to furnish a convenient generic term for category (a).

18. I can now—and not before time—return to the facts of the case in hand. When on 29 January 1981 the benefit officer decided that a deduction of £4.60 should be made from the claimant's housing requirements (cf. paragraph 10 above), he took the view that Mrs P. was "a non-dependant living in [the claimant's] house because they are not maintaining separate households in that they share the bathroom, kitchen and other parts of the house". It is clear that the benefit officer considered that he was deciding this aspect of the claim pursuant to regulation 22(4)(d) of the Requirements Regulations (for which see paragraph 11 above). His decision was premised upon the assumption that Mrs P. was a "non-dependant" vis-à-vis the claimant; which, in turn, imported the assumption that Mrs P. was a member of the claimant's household (cf. the definition of "non-dependant" quoted in paragraph 12 above). In my view neither of these assumptions can possibly be supported by the facts.

19. I have already observed that the legislature has furnished no definition of either "household" or "member of the same household". Neither of these terms has any technical meaning in general usage nor is either a term of art in the general law of the land. The terms fall, accordingly, to be given their normal, everyday meaning; and their application by the determining authorities is primarily a matter of fact. (See, for example, *Cozens v Brutus* [1973] A.C. 854, per Lord Reid at p 861.) In these circumstances it is undesirable that I should here attempt my own definitions—and I do not do so. It is a matter of common-sense and common experience. I say this, however: a person who has, and lives in, his own separate home cannot reasonably be regarded as being a member of someone else's household. In the case under appeal, Mrs P. clearly had a home of her own. She had the exclusive occupation of two rooms, which she herself had furnished. She bore her own costs in respect of lighting and heating. She bought and cooked her own food and provided for herself such other household goods as she required. All this is quite incompatible with her having been, at the same time, a member of the claimant's household. Had Mrs P.'s resources been such as to entitle her to a supplementary pension, she would have been entitled to have had her normal and additional requirements assessed upon the basis that she was a "householder" within the meaning of regulation 5(2) of the Requirements Regulations.

20. This does not, however, suffice to dispose of this appeal. When the claimant appealed to the tribunal against the decision which the benefit officer issued on 29 January 1981 (I shall refer to this as "the second appeal"), he confined his grounds to the point that Mrs P. was not a "non-dependant" of his. The tribunal, however, appears to have struck out on a fresh line of its own. I quote first the record of findings of material fact:

> "Until 24 11 80 Mrs P. was treated as a resident in the appellant's house who was not required to make a contribution to the rent because she gave domestic service necessitated because of his health. He suffers from bronchitis; is normally able to manage most things but when he has an attack of bronchitis is very ill indeed and he needs a resident adult to be ready to give him help on these occasions. The house has 5 rooms and central heating has been installed."

21. Part of the decision in the second appeal related to an additional requirement in respect of central heating. I return to this in paragraph 28 below. The remainder of the decision, however, read as follows:

> "Additional £4.60 to be made under Requirements Sch 3 para 14—from 24 11 80."

The reasons for this part of the decision were set out thus:

> "The situation did not change on 24 11 80 and the agreement which results in an award under para 14 now is the same as that which led to the comparable award in 1978."

22. Paragraph 14 of Schedule 3 to the Requirements Regulations deals with the additional requirement which is styled "Domestic assistance". Applicability is set out thus:

> "14. Where—
>
> (a) a charge is made for assistance with the ordinary domestic tasks (for example, cleaning and cooking but excluding window cleaning and errands) of the assessment unit;
>
> (b) such assistance is essential because adult members of the assessment unit are unable to carry out all those tasks by reason of old age, ill health, disability or heavy family responsibilities; and
>
> (c) the assistance is not provided by a local authority, nor by a close relative who incurs only minimal expenses."

The relevant weekly amount is set out in column (2) of Schedule 3:

> "14.—(1) Where, exceptionally, residential assistance is needed, for example where the person assisted is very severely disabled, the weekly amount of the charge for assistance provided this does not exceed twice the ordinary rate for non-householders; and
>
> (2) in any other case, the weekly amount of the charge for assistance provided that it is reasonable in the circumstances."

23. I must confess to being deeply puzzled by the introduction into the second appeal of paragraph 14 of Schedule 3. Nowhere in the papers which antedate the hearing of that appeal is there any reference whatsoever to Mrs P.'s making any "charge" for such services as she may have rendered to the claimant; indeed, I cannot in such papers find even a reference to the rendering of any services. In the second appeal the tribunal found as a fact that a degree of (wholly unparticularised) domestic service was rendered by Mrs P. at (again unparticularised) intervals. There is no finding, however, in respect of any charges being made therefor.

24. The papers do not contain any record of the evidence which was given to the tribunal which heard the second appeal. The same chairman presided over the second appeal as had presided over the first; and on behalf of the claimant I have been invited to assume that the chairman, when participating in the second decision, drew upon such knowledge of the case as he had derived from the hearing of the first appeal. Whether this would have been a proper course for the chairman to adopt, I do not here have to decide. The issue does not arise as one of practical importance. As I have already observed (see paragraph 9 above) there is nothing in the papers to suggest that in the first appeal any reference was made either to the claimant's health or to the rendering by Mrs P. of any assistance to the claimant. The picture presented by the first appeal is clear. No money moved either way between the claimant and Mrs P. Mrs P. enjoyed free of charge the occupancy of her "home" in the claimant's house. "All I get out of it", wrote the claimant in his grounds in the first appeal, "is that I am not quite so shut off from the world". I am at a total loss, accordingly, to understand how, in respect of the second appeal, the chairman came to record:

"The situation did not change on 24 11 80 and the agreement which results in an award under para 14 now is the same as that which led to the comparable award in 1978" (cf. paragraph 21 above).

25. The aforesaid "award under para 14" appears to have been made under paragraph 14(1) of column (2) of Schedule 3 (see paragraph 22 above). (The findings of material fact record that "he needs a resident adult to be ready to give him help.....etc.") This of itself invites three further comments:

(a) The tribunal does not seem to have come to grips with the significance of the fundamental condition imported by the words: "Where, exceptionally, residential assistance is needed, for example where the person assisted is very seriously disabled....." (my underlining).

(b) In this context "residential" must, surely, import residence in the home of the claimant. I have already demonstrated that Mrs P. was *not* residing in the home of the claimant. She had a home of her own.

(c) Regulation 22(5) of the Requirements Regulations provides, *inter alia,* that where an amount is applicable to the claimant under paragraph 14(1) in column (2) of Schedule 3, no reduction shall be made under paragraph (3) of regulation 22 (see paragraph 11 above). If, accordingly, the tribunal thought it right to award £4.60 under the said paragraph 14(1), it ought at the same time to have struck down the reduction of £4.60 which was the original issue in the second appeal. This would, of course, have left the claimant £4.60 a week better off than even he had contended for.

26. The truth is, I am sure, that the second tribunal took the view that—

(a) the law required the aforesaid deduction of £4.60;

(b) in the circumstances of this case, such deduction worked a manifest injustice; and

(c) the most convenient way of remedying that injustice was to make a compensating award under paragraph 14 of Schedule 3.

"C'est magnifique; mais ce n'est pas le droit!" (Magnificent; but not law.) The answer is that the law did not require the deduction which the benefit officer made; and there was no need to pluck out of the air any compensating award.

27. Both in documents which came into existence after the second appeal hearing and in the course of the oral hearing before me reference was made, on behalf of the claimant, to sums of money alleged to have passed regularly, and on a weekly basis, between the claimant and Mrs P. As I have already stressed, I can find nothing in the papers which leads me to believe that there was before either tribunal any evidence in respect of such sums. Indeed (as I have observed), all indications are to the contrary. In this jurisdiction appeals to the Commissioner are restricted to points of law. It is not open to a claimant, having put one set of facts before the tribunal, to come to the Commissioner with a materially different set of facts. Since 15 February 1982 the Commissioner has had the power, where he holds the tribunal to have erred in law, to give, if he is satisfied that it is expedient in the circumstances, the decision which the tribunal should have given. This must mean "should have given on the facts as found by it".

28. The claimant's house is centrally heated. In the award the subject of the benefit officer's decision of 29 January 1981 the sum of £1.40 was allowed as an additional requirement in respect of heating. This was done

pursuant to paragraph 3(a) of Schedule 3 to the Requirements Regulations. The tribunal found as a fact that the claimant's "house" contained five rooms. It then invoked paragraph 3(b) of the said Schedule, with the result that the heating item was raised to £2.80. In the said paragraph 3 the word used is "home", not "house". I have already found that two of the said five rooms constitute the home of Mrs P. Moreover, Mrs P. pays for her own heating (see paragraph 5 above). In consequence, the claimant cannot bring himself within paragraph 3(b). The award of £2.80 cannot stand and must be reduced to £1.40.

29. I am satisfied that it is expedient that I should now give the decision which the tribunal should have given in the second appeal. My decision, accordingly, is as follows:

(1) The benefit officer's appeal to the Commissioner is allowed.

(2) The tribunal's decision dated 13 April 1981 is erroneous in law and is set aside.

(3) The claimant's appeal to the tribunal is allowed.

(4) The claimant is entitled to a supplementary pension from the prescribed pay day (Thursday) in the week commencing 16 February 1981, calculated upon the bases that—

(a) no deduction from housing costs is to be made in respect of Mrs P.;

(b) the claimant is entitled, under paragraph 3(a) of Schedule 3 to the Requirements Regulations, to a heating addition of £1.40 a week; and

(c) the claimant is not entitled to any addition under paragraph 14 of Schedule 3 to the Requirements Regulations.

(5) I leave to the benefit officer the computation of the weekly supplementary pension thrown up by sub-paragraph (4) immediately above. In the event of any dispute, either party may restore this appeal before me for my further determination.

30. I add this. The decision issued by the benefit officer on 29 January 1981 purported to allow supplementary pension from the date set out in paragraph 29(4) above "to and including the prescribed pay day in week commencing 10.8.81". This he had no power to do. Regulation 6(1) of the Supplementary Benefit (Determination of Questions) Regulations 1980 [S.I. 1980 No 1643] provides as follows:

"(1) Subject to paragraph (2), any award of a pension or allowance shall be for an indefinite period (but subject to the provisions of regulations 4 and 5 as to review of determinations)."

Nothing in the said paragraph (2) justified, in this case, an award for a definite period. Paragraph 28(4) above amounts, of course, to an award for an indefinite period. It is based upon the material facts as I presently understand them to have been. If the material facts were otherwise, or have subsequently become otherwise, then the benefit officer has power to review my decision pursuant to the terms of regulation 4(1)(a) of the Determination of Questions Regulations.

(Signed) J. Mitchell
Commissioner